

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
AUG - 8 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Reorganization and Revision of)
Parts 1, 2, 21, and 94 of)
the Rules to Establish a New)
Part 101 Governing Terrestrial)
Microwave Fixed Radio Services)

WT Docket No. 94-148

DOCKET FILE COPY ORIGINAL

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, the Association of American Railroads ("AAR"), by its attorneys, hereby opposes the "Petition for Partial Reconsideration" ("CAI Petition") filed by CAI Wireless Systems, Inc. ("CAI" or the "Petitioner") on June 27, 1996 in the above-captioned proceeding.¹ In support of this opposition, the following is shown:

I. Summary of CAI's Proposal

In its Petition, CAI requests that the Commission reconsider its rules and amend Section 101.603(b)(3) to allow stations licensed under Part 101 to use the 10,700-11,700 MHz band (the "11 GHz Band") to provide the final RF link in the train of transmission of program material to cable television systems, multipoint distribution systems or master

¹ Establishment of a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-148 et al., Report & Order (released February 19, 1996) ("Report & Order").

No. of Copies rec'd 0511
LIC: ABCDE

antenna TV systems.² In the alternative, CAI suggests that Section 101.603(b)(3) be eliminated entirely.³ CAI contends that the 11 GHz Band would be especially appropriate for use by wireless cable operators because of both equipment availability and the length of the hops that can maintain reliable service. CAI maintains that, absent the ability to operate in the 11 GHz Band, wireless cable operators will have to lease fiber optic capacity at a greater cost, design their systems based on regulatory considerations rather than engineering and cost factors, or use a common carrier to provide service in the 11 GHz Band.⁴

CAI also argues that the rule is inconsistent with the goals of this proceeding in that it perpetuates a distinction between private and common carrier services for no valid purpose.⁵ In addition, CAI argues that the rationale for limiting video delivery below 21.2 GHz -- to prevent congestion in services using the bands -- has gone unexamined by the Commission for thirty years, and in any case, did not apply to the 11 GHz Band.⁶

II. Description of AAR'S Interest

AAR is a voluntary non-profit organization composed of member railroad companies operating in the United States, Canada and Mexico. AAR represents its

² CAI Petition at 1.

³ Id.

⁴ Id. at 3.

⁵ Id. at 4.

⁶ Id. at 7.

member railroads in connection with federal regulatory matters of common concern to the industry as a whole, including matters pertaining to the regulation of communications. In addition, AAR functions as the frequency coordinator with respect to the operation of land mobile and other radio-based services.

AAR member railroads deploy and depend on a sophisticated and comprehensive interrelated radio communications network consisting of both mobile and fixed point-to-point communications systems and facilities. The railroads use private fixed microwave systems that operate on frequencies in the 2 GHz band to meet critical safety and reliability requirements in their day-to-day operations. Private microwave facilities are used to monitor and control more than 1.2 million train cars on more than 215,000 miles of track. For example, microwave systems carry information regarding train signals and the remote switching of tracks and routing of trains that are necessary for the safe operation of trains on rights-of-way and through depots and freight yards.

In ET Docket No. 92-9, the Commission reallocated the 1850-1990, 2110-2150, and 2160-2200 MHz bands from private and common carrier fixed microwave services to emerging technology ("ET") services and established a transition plan for 2 GHz microwave licensees to move from the 2 GHz band to available frequencies in higher bands.⁷ Under the microwave relocation rules adopted by the Commission, microwave

⁷ See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, Notice of Proposed Rulemaking, 7 FCC Rcd. 1542 (1992) ("ET NPRM"); First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd. 6886 (1992) ("ET First Report and Order"); Second Report and Order, 8 FCC Rcd. 6495 (1993) ("ET Second Report and Order"); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589 (1993) ("ET Third Report and Order"); Memorandum Opinion and

incumbents may be forced to relocate to different frequencies in as little as three years.⁸ Many incumbents have already relocated their microwave systems voluntarily and hundreds more will relocate in the near future. In addition, the Commission has adopted a ten-year time limit during which ET licensees must pay for the costs of any incumbents they relocate.⁹ After this ten year period, incumbents will have to relocate to frequencies in higher bands at their own expense. Thus, there will be hundreds of additional relocations of 2 GHz microwave incumbents over the next decade. As these relocations occur, adequate replacement spectrum will become more and more difficult to secure. It is imperative, therefore, that the Commission do everything it can to ensure that all appropriate spectrum be reserved for 2 GHz microwave licensees who have been forced to relocate to other bands.

III. CAI's Proposal Would Disadvantage Incumbents

In the ET NPRM, the Commission proposed to reallocate 2 GHz microwave incumbents to, *inter alia*, the 11 GHz Band.¹⁰ This proposal was adopted by the

Order, 9 FCC Rcd 1943 (1994) ("ET Memorandum Opinion and Order"). See also Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, Notice of Proposed Rulemaking, 11 FCC Rcd. 1923 (1995); First Report and Order and Further Notice of Proposed Rulemaking, 61 Fed. Reg. 29,679 (1996) (1996).

⁸ See new Sections 101.71, 101.73 and 101.75.

⁹ New Section 101.79.

¹⁰ ET NPRM at ¶ 20 n.16.

Commission in the ET Second Report and Order.¹¹ In the ET Third Report and Order, the Commission noted that the reallocation plan was intended to provide "reaccommodation of existing 2 GHz fixed operations in a manner that will be advantageous to the licensees of the existing fixed operations, not disrupt those communications services, and foster introduction of new services and devices."¹²

AAR opposes CAI's proposal because it would disadvantage displaced microwave incumbents by decreasing the amount of appropriate spectrum available for relocation. Maintaining sufficient spectrum to accommodate microwave incumbents forced to relocate pursuant to the Commission's microwave relocation rules should be a higher priority for the Commission than securing benefits for wireless cable operators who seek to operate in the 11 GHz Band. Allowing wireless cable operators to use the 11 GHz Band as proposed by CAI would crowd the band and threaten its viability as an appropriate replacement band for critical safety-related communications of the railroads and other 2 GHz microwave incumbents.

As noted above, the railroads use fixed microwave communications facilities for critical safety functions which protect the lives of thousands of citizens on a daily basis. In its 1992 Notice of Proposed Rulemaking in ET Docket No. 92-9, the Commission acknowledged the critical nature of the services provided by private and common carrier fixed microwave system operators and stated that it "intend[s] to pursue this reallocation

¹¹ ET Second Report and Order, ¶ 43.

¹² ET Third Report and Order at ¶ 4 (emphasis added).

in a manner that will minimize disruption of the existing 2 GHz fixed operations."¹³ The Commission then stated that "it is technically feasible to move these services to higher frequency bands . . . There appears to be adequate capacity in the higher frequency bands . . ."¹⁴ The Commission specifically encouraged 2 GHz microwave incumbents with path lengths of less than 10 miles to relocate to frequency bands above 10 GHz.¹⁵

Many incumbents have relocated or will relocate to higher frequency bands, including the 11 GHz Band. While there appeared to be adequate capacity in the higher frequency bands in 1992, spectrum in these bands will become much scarcer as incumbents relocate to accommodate the arrival of emerging technologies. In order to ensure continued adequate capacity in these higher bands, the Commission must not authorize additional uses in the candidate replacement bands. By ensuring that adequate and appropriate spectrum exists in higher frequency bands, the Commission will also help to "minimize disruption of the existing 2 GHz fixed operations."

IV. Conclusion

The Commission's microwave relocation rules require 2 GHz incumbent microwave licensees to relocate to higher frequency bands in order to promote the development of emerging technologies. After requiring incumbents to relocate, the Commission should take all necessary steps to assist incumbents who are required to relocate. CAI's

¹³ ET NPRM at ¶ 19

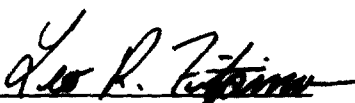
¹⁴ Id.

¹⁵ Id. at ¶ 20.

proposal would decrease the amount of appropriate spectrum available to displaced incumbents. The Commission should deny CAI's Petition because it is contrary to the Commission's goals of minimizing disruption of incumbents' operations and ensuring that adequate spectrum exists for the relocation of displaced incumbents.

Respectfully submitted,

The Association of American Railroads

By: 
Thomas J. Keller
Leo R. Fitzsimon

VERNER, LIPFERT, BERNHARD,
McPHERSON AND HAND, CHARTERED
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005
(202) 371-6611
Its Attorneys

August 8, 1996

CERTIFICATE OF SERVICE

I, Tina Harris, a secretary with the law firm of Verner, Lipfert, Bernhard, McPherson and Hand, hereby certify that on this 8th day of August, 1996, a copy of the Opposition To Petition For Partial Reconsideration was mailed, first class postage prepaid to Gerald Stevens-Kittner, CAI Wireless Systems, Inc., 2101 Wilson Boulevard, Suite 100, Arlington, VA 22201.

A handwritten signature in cursive script, appearing to read "Tina Harris", is written above a horizontal line.

Tina Harris